REMARKS/ARGUMENTS

The applicants acknowledge, with thanks, the Office Action dated June 25, 2010. Examiner's withdrawal of the finality of the previous office action is noted with appreciation. Claims 1, 11, 21, and 31 have been amended herein. Claims 2-7, 12-17, 22-27, and 32-38 have been canceled. Accordingly, claims 1, 8-11, 18-21, 28-31, and 39-44 are currently pending.

The amendments to the claims present no new matter. In particular, the outbound scan integrity check means and associated methods of using same for receiving user input corresponding to user-selected sorted consolidation of groups of a plurality of items associated with a plurality of unique shipper sources is disclosed in the present application including at paragraphs [0133] – [0137] of the application as published for example and in Figures 1, 3, and 20-29 for example.

Reconsideration of the instant application as amended is respectfully requested.

The Office Action

Claims 1-44 were rejected in the Office Action of February 4, 2010 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In addition, claims 1-44 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2004/0153379 to Joyce, in view of U.S. Patent Publication No. 2002/0010661 to Waddington. In view of the amendments and arguments set forth below, it is submitted that all pending claims are patentably distinct over the art of record.

The Examiner's Interview

Applicants thank the Examiner and her Supervisor for the telephonic interview conducted on September 2, 2010. During the interview, no exhibits were shown, no demonstrations were conducted, and no prior art was discussed. Claim 1 was discussed in connection with the 35 U.S.C. §112, first paragraph rejections of claim 1 and other claims. The general thrust of the principal arguments presented to the Examiner was that the specification did indeed support the pool distribution model embodiment. Applicants' representative and the Examiner also discussed canceling dependent claims 2-7, 12-17, 22-27, and 32-38.

The Non-Art Matters

As noted above, claims 1-44 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In this rejection, the Examiner took the position that "applicant was not in possession of the claimed invention at the time of the filing date." In particular, the Examiner focused on the "consolidation mode" language in claims 1, 11, 21, and 31. Also, the Examiner considered the selected features of "consolidation stage, grid stage area, loading vehicle stage, delivery storage, and pick up stage" to be unrelated to the claimed pooled distribution systems and methods.

Without conceding the above, applicants have tendered amendments to independent claims 1, 11, 21, and 31 to clarify the language found to be unsupported or objectionable by the Examiner and to place the claims in better conformance with the specification.

Also without conceding the Examiner's positions, applicants have canceled claims 2-7, 12-17, 22-27, and 32-38 from further consideration herein. Applicants reserve the right to pursue the subject matter of these canceled claims in one or more continuation and/or divisional application(s).

The Art Matters

As noted above, claims 1-44 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2004/0153379 to Joyce, in view of U.S. Patent Publication No. 2002/0010661 to Waddington. In view of the amendments and arguments set forth below, it is submitted that all pending claims are patentably distinct over the art of record.

By way of review and as discussed during the telephonic Examiner's Interview, the subject application teaches a distribution system by which individual retail shippers are enabled to achieve individualized control as to shipping, routing, and tracking their orders of merchandise "pushed" out to distribution points via an intermediary pooled transport distribution system. This retailer control is particularly advantageous in the pooled shipping arrangement, such as in an embodiment wherein a large retail shipper may use the pooled shipping channel in common with one or more other retail shippers. This pool distribution model is distinctive from more direct shipping methods, such as FedEx or UPS, wherein a retailer shipper specifies the destination and delivery type (such as Express, Ground, Overnight, etc.). In such situations, the

retailer sender is unconcerned with routing, and is further at the whim of the shipping company as to which tracking information is available to the sender.

The subject application contemplates systems wherein larger volume shippers, for example, retailers, have multiple items to ship to multiple locations. Different retailers have different routing than may be optimal, including a shipping path and consolidation of shipments for cost or efficiency reasons. This is especially true when a shipping company concurrently services many retail establishments, each having their own desirable shipping, routing or consolidation needs. The subject application teaches an embodiment wherein a retailer shipper having such sender-driven flexibility and control over the associated pooled transport distribution system would be afforded significant competitive advantages over more conventional shippers using traditional carriers such as FedEx, UPS, etc. and/or using the distribution center direct mode of delivery.

As described for example at paragraph [0113] of the present application, in the pool distribution model, goods are also warehoused at a distribution center; however, they are not delivered to the customer directly from the distribution center. Goods for multiple delivery points in a single geographic area are loaded on a tractor trailer at a retail shipper's distribution center for example, and are then shipped to a secondary warehouse ("pool distribution point"). There the goods are unloaded, sorted and segregated into single store orders together with the goods of other retailers shipping those goods to end destinations such as retail stores in a specific geographical area (such as for example "all malls on the west side of town," etc.). These orders are then shipped from the pool distributor to their ultimate delivery point by one or more trucks, etc., fanning out into a corresponding set of routes to deliver the pooled goods of the multiple retailers to end destinations on the route. A diagram illustrating the pool distribution model simplified to show only a single retail shipper is shown in FIG. 3.

In accordance with the above, applicants have tendered amendments to each of independent claims 1, 11, 21, and 31 to clarify the subject matter of the pool distribution embodiment over the art of record. In particular, with reference to independent claim 1 for example, an electronic system for managing items in a supply chain comprises: item information capturing means, outbound scan integrity check means, capturing mode specifying means, communicating means, reporting means, and means for commencing distribution by a single pool distributor of each item of first and second sets of items of a pooled group of items from a

plurality of unique shipper sources, which were sorted and consolidated for pooled distribution. The item information capturing means is adapted for capturing item identification information associated with a plurality of items associated with a plurality of unique shipper sources and delivery destinations, and each of the plurality of items are identified for supply chain management in connection with an associated pooled transport distribution system. The outbound scan integrity check means is adapted for receiving first user input corresponding to a user-selected sorted consolidation of groups of the plurality of items associated with the plurality of unique shipper sources prior to delivery by grouping a first set of items associated with a first shipper of the associated pool transport distribution system together with a second set of items associated with a second shipper of the associated pooled transport distribution system as a pooled group of items, and relative to routing of transport of the pooled group of items associated with the first and second shippers by a single associated pool distributor of the associated pooled transport distribution system. The capturing mode specifying means is adapted for receiving second user input corresponding to each of the plurality of shipper sources, wherein each received second user input is representative of a selection of at least one of a plurality of capturing modes, and wherein each capturing mode is adapted for creating associated information by associating the captured item identification information with supply chain information in accordance with one of the plurality of shipper sources corresponding thereto. The communicating means is adapted for communicating the associated information to an associated data storage device for storage in accordance with one of the plurality of sources corresponding thereto. The commencing means commences distribution by the single associated pool distributor of each item of the first and second sets of items of the pooled group by the pool distributor of the associated pooled transport distribution system to a plurality of associated destinations in accordance with the sorted consolidation and routing specified by the first user input. The reporting means generates report data representative of distribution by the single pool distributor of a first portion of the pooled group of items to a first destination of the plurality of destinations and a second portion of the pooled group of items to a second destination of the plurality of destinations.

Overall, the specification supports and describes grouping such as by sorting etc. items received from a plurality of unique shipper sources, before delivering the sorted and grouped items as a pooled group and routing sets of pooled groups of items associated with different

shippers by one or more pool distributors. In particular, as described at paragraph [0113] for example, a general disclosure of the pool distribution model embodiment is provided, wherein:

> [i]n the pool distribution model, goods are also warehoused at a distribution center; however, they are not delivered to the customer directly from the distribution center. Goods for multiple delivery points in a single geographic area are loaded on a tractor trailer at a shipper's distribution center, shipped to a secondary, usually independent, warehouse ("pool distribution point") where the goods are unloaded, sorted and segregated into single store orders. These orders are then shipped from the pool distributor to their ultimate delivery point. A diagram illustrating the distribution center direct model is shown in FIG. 3.

Thus, from the above, items associated with different shippers are grouped before delivering them as a pooled group. Also from the above, sets of items associated with different shippers are routed by the pool distributor.

A more detailed disclosure of the pool distribution model embodiment is provided at paragraph [0116] for example. As described there, wherein "WMS" refers to a "warehouse management system" and wherein "ASN" refers to an "advance shipment notice," in accordance with this embodiment:

> [i]n the pool distribution model, the WMS generates the ASN 302 after goods have been prepared for outbound shipment and loaded onto a truck bound for a pool distribution point. The ASN represents a listing of goods that should have been shipped to the pool distribution point. The ASN is transmitted to the web database via an FTP transmission. Upon receipt of the goods at the pool distribution point, the freight is scanned ("inbound scan") 304, sorted into individual store orders, and scanned again ("outbound scan") 306 to verify the integrity of the sortation, loaded onto trucks for store delivery and scanned at the store ("delivery scan") 308. If freight is being picked up at the store for return to the shipper's distribution center or transferred to another store, the freight is scanned as it leaves the store ("returns or transfer scan") 310. After the freight is scanned at each scan point, the desktop application is used to upload, process the scan data and then transmit it to the web database. A web reporting application is then used to provide online data reporting allowing users to make inquiries about the freight data stored in the web database.

Grouping of items associated with different shippers before delivering them as a pooled group is described in the specification at paragraphs [0134] and [0135] for example and shown in general in Figures 20 and 21. In particular, as set out in those paragraphs:

> [t]he inbound scanning process is shown in FIG. 20. Inbound scanning occurs upon the arrival of a truck from a shipper's distribution center at a pool distribution site. Here the pool distributor selects inbound scanning mode on the scanner 2002, enters information on the inbound load such as the trailer number, seal number, etc. 2004, scans the freight off of the tractor trailer 2006, and, when finished scanning all of the cartons on the trailer, uploads the data captured by the scanner to the desktop application 2008.
>
> The outbound scan/integrity check process is shown in FIG. 21. Outbound scanning/integrity check scanning occurs after the initial receipt of the shipper's freight and the inbound scan. Once the freight that has been received is sorted and segregated by store order, the outbound scan/integrity check mode 2102 is selected, the store number of the order to be checked is entered into the scanner 2104, and the cartons scanned 2106. If in the process of scanning, a carton has been mis-sorted, the scanner will emit an audible tone and the scanner will turn off. This alerts the user to an incorrect sortation. This scan also helps the pool distributor to catch any cartons that were not scanned inbound. After completing this scan, the data in the scanner is uploaded into the desktop application 2108.

Routing by the pool distributor of sets of items associated with different shippers is described in the specification at paragraphs [0136] and [0137] for example and shown in general in Figure 22. In particular, as set out in those paragraphs:

> FIG. 22 shows the delivery scanning process. Delivery scanning is performed by the driver at the store when making a delivery. Delivery scanning can be performed in either batch or preload mode. In batch mode, the scanner simply collects the data from each barcode scanned. In preload mode, the barcode numbers of cartons expected to be delivered to a particular store are loaded into the scanner 2202. When scanning a carton barcode at delivery, the scanner application compares the barcode scanned against the list of barcode carton numbers preloaded into the scanner for that store. If the barcode scanned matches the barcode preloaded, the scanner records a match. If the barcode scanned is not included in the preloaded list of cartons, the scanner records an overage. If at the end of scanning, all of the preloaded cartons are not scanned, the preloaded scanner application reports those cartons as shortages.
>
> Whether the driver delivery scans in batch or preloaded mode, the scanning process is the same. After arriving at the store, the driver selects delivery mode on the scanner 2204, and either scans a store barcode or manually enters the store number 2206 which records the time of arrival for on-time delivery performance reporting, and then begins to scan the cartons 2208. If the driver needs to return to the truck to gather more cartons for the delivery, the driver

> checks out by scanning the store barcode and upon return scans the store barcode again to check in. This provides the pool distributor with a snapshot of the delivery process. At the conclusion of scanning all of the cartons, the driver enters the name of the store receiving personnel which ends the delivery scanning session. Upon return to the pool distributor's terminal, the scanner data is uploaded 2210 into the desktop application.

More detail and support regarding the routing by the pool distributor of sets of items associated with different shippers is provided in the specification in connection with delivery details at paragraph [0153] for example and shown in general in Figure 45. In particular, as set out there:

> [w]hen finished scanning all of the cartons to be delivered, the user taps the Finish button 3636. T his brings the user to the Accepted By screen 4500 shown in FIG. 45. This screen displays shipment details relating to the most recent delivery scanning session: The company 4502, the division 4504, the store number 4506, the number of cartons damaged 4508, expected 4510, misrouted 4512, actually scanned 4514 and short 4516, picked up 4518, time elapsed for the delivery 4520, and the return bill of lading number 4522 and transfer bill of lading number 4524, if any. To finish the delivery, the user must enter the store representative's name. This is done by tapping the Set button 4526 which brings the user to the Store Representative screen 4600 shown in FIG. 46 where the user taps the appropriate letters to type the store representative's name. When finished, the user taps the OK button 4602 to return to the Accepted By screen 4500. Once the store representative's name is entered, the user can select the Finish button 4528 to complete the delivery scanning session. Tapping the Back button 4530 will take the user back to the Scan Cartons screen 3600.

Still further, applicants respectfully submit that the specification contains threads therein describing in detail that in the pooled distribution model embodiment, items associated with different shippers are grouped before delivering them as a pooled group, and sets of items associated with different shippers are routed by the pool distributor. In particular, Figures 20-29 and Figures 33-52 together with the portions of the specification relating thereto, describe a pooled distribution delivery embodiment in support of the embodiments of the claims as amended herein.

With reference once again to the Office Action, the Examiner took the position that "Joyce shows all the limitations as claimed except for capturing modes." Applicants respectfully disagree in particular with regard to the teachings of Joyce relative to the claims as currently

amended. Applicants respectfully submit that the system of Joyce as described in the Abstract and in paragraph [0016] thereof fails to commence distribution by the single associated pool distributor of each item of first and second sets of items of a pooled group by the pool distributor of the associated pooled transport distribution system to a plurality of associated destinations in accordance with sorted consolidation and routing specified by the a first user input as set out in the claims herein and, in particular, in independent claim 1.

In the present application, the items are received from a plurality of unique shipper sources, they are sorted and consolidated by a single pool distributor, then shipped to a plurality of associated destinations as pooled groups of items. Conversely, the system of Joyce is an order picking system which simply aggregates the orders of individual customers into a single bundle for individual distribution to single customers, one at a time.

Once these individual orders are picked and packed, Joyce describes a distribution center direct model, not a pooled distribution system as claimed. As shown in Figure 2 of Joyce, goods from multiple sources are assembled at a distribution center wherein individual customers may collect the bundled aggregated order.

It is described at paragraphs [0016] - [0023] of Joyce, for example, the each customer is associated with a centralized distribution center whereat the customers may retrieve their orders and for purposes of reducing the number of delivery points. Joyce is accordingly about shipping single orders to a single location.

In contradistinction to Joyce, the systems and methods of the present application consolidate orders/shipments from multiple shipper sources for delivery as pooled groups of items to a plurality of associate destinations.

It is respectfully submitted that Waddington does not cure these deficiencies of Joyce. The Examiner cited Waddington only for its alleged teaching of "capturing modes" but Waddington also fails to teach, suggest or disclose consolidation of orders/shipments from multiple shipper sources for delivery as pooled groups of items to a plurality of associate destinations.

For at least the above reasons, it is respectfully submitted that the claims as amended are novel, patentably distinct, and unobvious over the art of record.

Conclusion

In accordance with the afore-noted amendments and comments, it is submitted that all claims are patentably distinct over the art, and in condition for allowance thereover. An early allowance of all claims is respectfully requested.

If there are any fees necessitated by the foregoing communication, the Commissioner is hereby authorized to charge such fees to our Deposit Account No. 50-0902, referencing our Docket No. 078297/000001.

Respectfully submitted,

Date: 12/25/10

Susan L. Mizer
Registration No. 38,245
TUCKER ELLIS & WEST LLP
1150 Huntington Bldg.
925 Euclid Ave.
Cleveland, Ohio 44115-1414
Customer No.: 23380
Tel.: (216) 696-3466
Fax: (216) 592-5009